Supreme Court, U. S.
FILED
MAR 4 1977
MICHAEL RODAK, JR., CLERK

No. 76-921

In the Supreme Court of the United States

OCTOBER TERM, 1976

JEROME RAPOPORT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

DANIEL M. FRIEDMAN,
Acting Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-921

JEROME RAPOPORT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Southern District of New York, petitioner was convicted on three counts of causing the making of a false loan application to a federally insured bank, in violation of 18 U.S.C. 1014 and 2(b), two counts of causing the making of false statements in loan applications to the Small Business Administration, in violation of 18 U.S.C. 1001 and 2(b), and one count of making a false sworn declaration, in violation of 18 U.S.C. 1623. He was sentenced to concurrent terms of two years' imprisonment on the loan counts and a consecutive term of one year's imprisonment on the false swearing charge. The court of appeals affirmed (Pet. App. 1a-10a; 545 F. 2d 802).

The evidence showed that petitioner, a lawyer and former employee of the Small Business Administration (S.B.A.), served as a "finder" for four S.B.A. guaranteed bank loans.[1] Since each of the borrowers for whom petitioner performed this service was in serious financial difficulty, it agreed to pay petitioner ten percent of the proceeds of any loan he might succeed in obtaining for the company.

The S.B.A., however, requires that a prospective borrower indicate on its loan application whether any compensation has been paid or promised to anyone for services in connection with the procurement of the loan. Moreover, the agency will not approve a loan request which shows that a contingent finder's fee has been offered or paid.[2] Because he was aware of this rule, petitioner instructed his clients to omit reference to his services in their loan applications (Pet. App. 2a). As a result,

---

[1]The S.B.A. has statutory authority to guarantee the repayment of 90 percent of the amount borrowed for certain purposes by small businesses. To obtain a guaranteed loan, the applicant must prepare and submit a standard application form to the commercial lender, which in turn forwards the request to the S.B.A. if it believes the request to be meritorious. 15 U.S.C. 636(a).

[2]15 U.S.C. 642 provides that no loan guaranteed by the S.B.A. may be made to any business unless its owners or officers certify to the Administration the name of any person engaged by the business for the purpose of expediting applications for assistance of any sort and the fees to be paid him. Administrative regulations also prohibit anyone from charging or proposing to charge a contingent fee for services performed in connection with an S.B.A. loan, unless the fee bears a necessary and reasonable relationship to services actually performed. 13 C.F.R. 103.13-5(c). The application form itself indicates that the S.B.A. will not approve a request listing placement or finder's fees based on a percentage of the loan.

three of the applicants failed to state that they had retained petitioner to obtain their loans and one applicant (Entre Nous Graphics, Inc.) affirmatively misrepresented that it had not utilized the services of petitioner or anyone else to procure the loan.

1. Petitioner contends (Pet. 4-11) (a) that he was improperly convicted as a principal under 18 U.S.C. 2(b), (b) that he was denied a fair trial by an improper remark in the government's closing argument, and (c) that his false declaration related to an immaterial matter. Each of these contentions is fully answered by the opinion of the court of appeals (Pet. App. 1a-10a), on which we rely.

2. Petitioner also contends (Pet. 11-12) that government misconduct requires reversal of the "Entre Nous" loan count. Since petitioner received a concurrent sentence of two years' imprisonment on each of the five counts related to the false loan applications, it is unnecessary for the Court to reach this claim. See *Andresen* v. *Maryland*, No. 74-1646, decided June 29, 1976, slip op. 5, n. 4; *Barnes* v. *United States*, 412 U.S. 837, 848, n. 16. It is in any event without merit.

The relevant facts are as follows: Allan Pollak, the president of Entre Nous Graphics, Inc., began cooperating with the government's investigation of petitioner after his company's application had been submitted to the bank. Before the loan was disbursed, however, the government served a subpoena on the bank seeking the records of the transaction. In light of the subpoena, the bank informed Pollak that it would not disburse the loan (Pet. App. 24a).

Because he was then in financial difficulty, Pollak asked the Assistant United States Attorney involved in the investigation for assistance in obtaining the release

of the funds. Thereafter, on two separate occasions the government attorney contacted the bank (*ibid.*). The attorney did not indicate that there were illegalities in the loan transaction, but rather suggested that the bank officer should use his independent judgment in deciding whether to disburse the loan (Pet. 11). On both occasions the bank determined to release the funds to Pollak.

There is no basis for petitioner's suggestion that the government's intervention on Pollak's behalf constituted an improper payment to him for his favorable testimony or that petitioner was prejudiced by this course of conduct. All of the evidence concerning the government's relationship with Pollak was presented to the jury for whatever weight it might have on the credibility of Pollak's testimony. Cf. *United States* v. *Gardner*, 516 F. 2d 334, 343-344 (C.A. 7), certiorari denied, 423 U.S. 861.[3]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

DANIEL M. FRIEDMAN,
Acting Solicitor General.

MARCH 1977.

---

[3]The government conduct condemned in *United States* v. *Archer*, 486 F. 2d 670 (C.A. 2), bears no relation to that involved here. The concern in *Archer* was the manufacture by federal officers of federal jurisdiction for what was essentially a local crime. Here, the government merely chose not to interfere with an established business relationship on the basis of tentative conclusions during an ongoing criminal investigation.